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KENYON & KENYON LLP 1500 K STREET N.W. SUITE 700 WASHINGTON, DC 20005			JOO, JOSHUA	
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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 09/891,167
Filing Date: June 26, 2001
Appellant(s): RUSE ET AL.

Sumit Bhattacharya
For Appellant

EXAMINER'S ANSWER

MAILED
MAY 30 2006
Technology Center 2100

This is in response to the appeal brief filed 3/2/2006 appealing from the Office action mailed 10/31/2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6405035	Singh	6-2002
6028514	Lemelson et al	2-2000

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

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Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Singh, US Patent #6,405,035 (Singh hereinafter), in view of Lemelson et al, US Patent #6,028,514 (Lemelson hereinafter).

As per claims 1 and 13, Singh teaches substantially the invention as claimed including a method and program for forwarding messages to a subscriber device, Singh's teaching comprising (Col 8, lines 23-26. Host server has software to have the functionality of the present invention.) :

monitoring locations of access of incoming messages along with the time of day and day of week (Col 3, lines 18-23. Agents monitor the message status, which includes receipt and access of messages for the subscriber's devices.);

storing each access of the message along the associated time of day and day of week in a database (Col 3, line 30-37. Host server maintains a record of the access time and date of the message.);

performing a statistical trend analysis on a user basis to determine a probability of contacting the user for a given time of day and day of week at a given location (Col 5, lines 13-16. Host server determines which subscriber device will have the highest probability of receiving the message.);

storing in a trend analysis table the result of the statistical trend analysis performed; (Col 3, lines 9-11. Host server has memory for storing subscriber information and processing the sending of messages.)

transferring incoming messages to the location in the trend analysis table with the highest probability of contacting the user (Col 6, lines 3-4. The message is send to the device with the highest probability of receiving the message.).

Singh's teaches substantial features of the claimed invention. However, Singh's invention differs from the claimed invention that Singh monitors of when and where a message is accessed, but the response to the message. Lemelson teaches of monitoring a person's location, wherein a monitor checks for responses to paged messages. (Col 16, line 53 – Col 17, line 14).

It would have been obvious to one of ordinary skill at the time of the invention was made to combine the teachings of Singh and Lemelson because the teachings of Lemelson to monitor the response of the incoming message would improve Singh's system by providing a more accurate and reliable process for determining the location of the user. Monitoring the response of the message would increase the probability that the user is at the location where message was sent.

As per claim 7, Singh teaches substantially the invention as claimed including a system for forwarding messages to a subscriber device, Singh's teaching comprising:

monitoring module to monitor access by users to messages received and store the location of the receipt with a time stamp in a database (Col 3, lines 18-23. Agents monitor the message status, which includes receipt and access of messages for the subscriber's devices.);

a trend analysis module to perform a statistical probability on the location and time stamp data in the database and determine the probability of contacting the user at each of a plurality of locations for a given time of day and storing the probability of contacting the user at each of a plurality of locations in a trend analysis table (Col 5, lines 13-16. Host server ranks each device to determine which subscriber device will have the highest probability of receiving the message.);

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forwarding module to receive an incoming message and forward the incoming message to a location with the highest probability of contacting the user as designated in the trend analysis table (Col 3, lines 5-8. Host server receives the message request and forwards to the subscriber. Col 6, lines 3-6. After ranking the devices, the message is send to the highest ranked device.).

Singh's teaches substantial features of the claimed invention. However, Singh's invention differs from the claimed invention that Singh monitors of when and where a message is accessed, but the response to the message. Lemelson teaches of monitoring a person's location, wherein a monitor checks for responses to paged messages. (Col 16, line 53 – Col 17, line 14).

It would have been obvious to one of ordinary skill at the time of the invention was made to combine the teachings of Singh and Lemelson because the teachings of Lemelson to monitor the response of the incoming message would improve Singh's system by providing a more accurate and reliable process for determining the location of the user. Monitoring the response of the message would increase the probability that the user is at the location where message was sent.

As per claims 2, 8 and 14, Singh teaches the invention of claims 1, 7 and 13, wherein said trend analysis table comprises a user identification, a plurality of times a day and days of week with locations of contact and probabilities of successful contact associated with each location. (Col 2, lines 59-60. Subscriber registers with host server. Col 5, lines 19-20. Subscriber provides host server a schedule of the times at which they can be contacted. Col 5, lines 13-15. Host server ranks the devices for the highest probability the subscriber will receive the message.)

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As per claims 3, 9, and 15, Singh teaches the invention of claims 2, 8, and 14 wherein said trend analysis table further comprises a user override location that indicates probabilities of successful contact for each location are to be ignored and only the override location is to be used for contact. (Col 5, lines 59-63. The subscriber may determine which of the devices messages are to be received. Subscriber may instruct the host server to send messages to specific devices)

As per claims 4, 10, and 16, Singh teaches the invention of claims 3, 9, and 15 wherein the incoming messages and responses are from PSTN telephone, cellular telephone, pager, fax, voice mail, e-mail or other voice or digital communication format. (Col 6, line 62 – Col 7 line 25. Messages may originate from any number of locations through the Internet, PSTN, or wireless communication devices. Col 8, lines 3-11. The devices may include cellular telephone, facsimile, pager or Internet access)

As per claim 5, 11, and 17, Singh teaches the invention of claims 4, 10, and 16 where the invention further comprises of checking the user override location in the trend analysis table and transmitting the incoming message to the user override location when set. (Col 5, line 59 – col 6, line 2. Subscriber may instruct Host server which of the devices messages are to be received. Subscriber may instruct Host server to send messages to specific devices.).

As per claims 6, 12, and 18, Singh teaches the invention of claims 4, 10, and 16 comprising:

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contacting the user at the location with the highest probability of successful contact associated with the location. (Col 6, lines 4-5. The message is send to the device with the highest rank.)

contacting the user at the location with second highest probability of success when unable to contact the user at the location with the highest probability of success. (Col 6, lines 8-14. If the subscriber doesn't access the message of the first device, the message is send to the next ranked device.).

(10) Response to Argument

Appellant argued that:

(1) Singh does not monitor the location of access of messages. Singh does not disclose monitoring locations of any sort, instead merely describing the monitoring the status of the messages, including "access".

In reply to argument (1), Singh discloses the use of agents stored within each device of a plurality of devices, wherein the devices are in different locations (Col 2, lines 63-66). The agents within the devices monitor the message status of whether an incoming message has been accessed, and returns the message status information to a host server (Col 3, lines 15-25). The message status includes the time the message was accessed by client (Col 3, lines 34-37). By monitoring the status of the incoming message in each device, the host server is able to determine which device was used to access the incoming message.

Each device is separately capable of transmitting and receiving data (Col 2, lines 59-62; Col 3, lines 22-21), and associated with an address (Col 4, lines 20-24), therefore an identifiable location, i.e. wireless communication device, office computer, or home computer (Col 2, lines 64-66). By monitoring which device was used to access the incoming message, the host server

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is essentially identifying the location of where the incoming message was accessed as well. This is stated as the purpose of Singh's invention on Column 2, lines 10-13, "a probabilistic approach is used for determining the where the subscriber is located and delivering the message a device at that location."

(2) "monitoring" described in Singh does not include monitoring or maintaining a record of locations of access at all, instead merely monitoring and maintaining a record of access time and date.

In reply to argument (2), Singh discloses of maintaining a record regarding each device, wherein each device is identified by its address. The record further comprises each message sent to a subscriber and the access time and date, the time the message was forwarded, the amount of time the message was pending before being accessed or deleted, and the time the message was accessed by the subscriber (Col 3, lines 30-37). Since a host server maintains the record of the time the message was accessed by a subscriber for each device, this is interpreted as maintaining a record of which device, i.e. address, the client used to access the message.

(3) The ability to determine receive messages from one of multiple sources is not the equivalent of determining the location where the signal is coming from. Just because the multiple sources are capable of sending messages, that does not mean the Singh system is capable of monitoring anything other than access time and date of the message. In order to monitor the location of access, the Singh reference must, for example, describe an ability to identify a device and its location.

In reply to argument (3), Examiner respectfully disagrees. The messages, e.g. signals as referred by Singh, Col 3, lines 19-25, sent by each device are used by a host server to maintain a record of when an incoming message was accessed for each device. This is supported by Singh on Column 3, lines 23-24, "Master agent 21 monitors the status of each of the messages on each device...", and on Column 3, lines 32-37, "The record may include... the amount of time the message was pending at the various devices before being accessed..." Singh discloses that the host server identifies each device and each device's message status, which is more than simply monitoring access time and date as argued by the appellant.

Appellant further argued that Singh must describe an ability to identify a device and its location. Singh discloses of maintaining the message status for each device, therefore the host server has the ability to identify and distinguish devices (Col 3, lines 30-37). Singh further discloses that each device has an address (Col 4, lines 20-24), and that the host server is also able to identify a device to forward messages to the device (Col 6, lines 3-17), thus a location, i.e. wireless communication device, office computer, or home computer (Col 2, lines 64-66). For the host server to be able to transmit a message to a device, the host server must be able to identify the device and its location. If the host server could not identify a location as argued by the Appellant, the host server would then be unable able to forward messages.

(4) Regarding Lemelson teachings, monitoring for a response to a paged message is not the equivalent of monitoring a location for the responses as recited in the embodiment of claim. Determining whether a response has come in is not the equivalent of determining where the response is coming from. There is no suggestion or motivation to combine Singh and Lemelson beyond the impermissible use of hindsight.

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In reply to argument (4), first of all, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Singh discloses of monitoring when and where an incoming message is accessed. However, Singh does not disclose monitoring when and where a **response** is transmitted due to the incoming message. Examiner believes the feature in appellant's claim, and not in Singh's invention, is an obvious addition to a patented invention because in order to transmit a response, a subscriber would first have to access the incoming message, which is disclosed by Singh.

Since Singh did not disclose monitoring **responses**, Singh was combined with Lemelson, wherein Lemelson taught the concept of monitoring for **responses** to paged messages. (Col 16, line 53 – Col 17, line 14). The Examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

In this case, Singh establishes the importance of locating and contacting the user in the "Background of the Invention," as Singh disclosed, "Timely receipt of notices can be vitally important in some circumstances... the subscriber will want to be notified at the time a particular stock of interest either reaches a predetermined high or low value" (Col 1, lines 10-20). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Singh and Lemelson because the teachings of Lemelson to monitor

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the response to messages would improve the system of Singh by improving the probability of forwarding messages to the correct location of the user as determining the location of the response to messages would provide the current location of the user. Furthermore, in determining the location of where a response was sent, this would indicate a location that the client has been for an extended period of length instead of at the time of accessing a message. Transmitting to this location would further increase the likelihood that messages will be forwarded to where the client currently is located.


For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


JJ

May 1, 2006

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